IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

Chamber Summons No.283 of 2006

In

S.C. Suit No.1210 of 1981

M/s.Devidayal tulsiram. .. .. Plaintiffs

v/s.

Devidayal Sales Private Ltd. .. .. Defendants

Mr.Gautam Ankhad i/by Dalal & Co. for Plaintiffs.

Ms.M.V. Thakkar with Ms.D. Thakkar i/by Gordhandas & Fozdar for Defts.

CORAM : SMT.ROSHAN DALVI, JJ.

Dated : 25th July, 2007

P.C. :

1. The Suit is filed by a registered Partnership Firm, the extract of registration is produced. The Firm has been dissolved on 13.10.2005 with effect from 31.3.2005.
2. The Chamber Summons is taken out for bringing the erstwhile partners of the dissolved Firm on record of the Suit. The Chamber Summons should have been taken out within 90 days of the dissolution. 90 days expired on 31.1.2006. There is a delay of 32 days in taking out this

Chamber Summons. A delay is explained in Para-3 of the Affidavit in support of the Chamber Summons. The reasons stated for the delay are accepted. The Chamber Summons is taken out on 15.2.2006. The delay is condoned.

3. The partnership Firm consisted of one Devekumar Aggarwal in his individual capacity as a Manager and Karta of an erstwhile HUF, which was partitioned as well as one Prabha Devkumar Aggarwal, who is his wife. Since HUF has been partitioned, HUF cannot be shown as one of the partners of the erstwhile Firm. Consequently, the Plaintiffs have tendered a draft amendment to the Schedule to the Chamber Summons showing the names of all the co-parceners of the HUF who received their share upon the partition of the HUF.
4. These are the Karta, his wife, his son and his 3 daughters, one of whom is a minor. These persons, therefore, would have to be shown as Plaintiffs.
5. It is contended that the Deed of Dissolution shows that HUF was constituted of the Karta, his wife and his son alone. All the females in the HUF, even not taken to be co-parceners, are entitled to receive their share upon partition. Hence, the daughters of the Karta are also stated to have received their share upon partition. Besides, their shares are now secured under Section 29A of the Hindu Succession Act, under which all the females are taken to be co-parceners. Since the partnership is dissolved, the erstwhile partners would

continue the action in law filed by the dissolved Firm under the provisions of the Partnership Act, 1932. All the partners are shown in the schedule to the Chamber Summons. Consequently, the Chamber Summons is made absolute in terms of prayers (a) and (b). The Plaintiffs to carry out amendments to show the title of the Plaint as per the amended schedule tendered to Court today within 2 weeks from today. Plaintiffs shall also correct the copy of the Plaint served upon the Defendants within 2 weeks.

6. S.O. for 4 weeks for framing issues.

(ROSHAN DALVI, J.)